IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.REGUPATHI

Crl.O.P.Nos. 17378 and 17379 of 2006
and
Crl.M.P.Nos.1,1, 2 and 2 of 2006

1.T.O.Joseph
2.T.O.Thomas ... Petitioners in both the Crl Original Petitions/Accused 3 & 4

Vs

1.M/s.Pari Yarn Stores
rep. By its Partner/POA Holder,
R.Kalyanasaundram.
249, Easwaran Koil Street,
Erode. ... Respondent No.1
Crl.O.P.No.17378/06

2.M/s. PA Yarn Syndicates
rep. By its Partner/POA Holder,
R.Kalyanasaundram.
249, Easwaran Koil Street,
Erode. ... Respondent No.1
Crl.O.P.No.17379/06

2. The State
rep. By Public Prosecutor,
Erode. ... Respondent No.2 in both the Crl.O.Ps.

Prayer: Petitions filed under Section 407 Cr.P.C to withdraw C.A.Nos.136 and 137 of 2005 pending on the file of the Fast Track Court No.1, Erode, and transfer the same to the file of this Hon'ble Court and then be tried along with C.A.No.554 of 2005 pending on the file of this Court.

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For Petitioners : Mr.Satish Parasaran

For Respondents : Mr. Ramesh for
M/s.Ram and Ram for R1.
Mr.P.Kumaresan
Additional Public Prosecutor for R2.

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C O M M O N O R D E R

The petitioners in both the criminal original petitions are accused No.3 and 4 among four accused for the offence punishable under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate No. II, Erode, in C.C.Nos.169 and 170 of 2003. On conclusion of the trial, the learned Magistrate convicted the petitioners and other accused and sentenced each one of them to undergo imprisonment for one year and also imposed a fine of Rs.5,000/- each. Aggrieved against the same, appeals have been preferred in C.A.Nos.136 and 137 of 2006 before the learned Additional Sessions Judge cum Fast Track Court No.1, Erode, and they are pending. The sentence imposed upon the petitioners have been suspended and the appeals are posted for arguments. Under such circumstances, the present petitions for transfer have been filed before this Court.

2. The learned counsel for the petitioners submits that the petitioners are accused in 19 cases. In two of the cases, they have been acquitted by the trial Court and in six cases, the petitioners were acquitted by the Appellate Court. Aggrieved against that, the complainant has preferred appeals against acquittal in C.A.Nos.368 and 369 of 2006 against the order passed by the trial Court and C.A.Nos.548 to 554 of 2005 against the order of acquittal passed by the Appellate court and the appeals have been taken on file by this Court and they are pending. The accused have been acquitted in those cases on the ground that the petitioners were not in charge and responsible for the affairs and business of the company. The learned counsel for the petitioners submits that in the appeals, which are pending before the Court of Sessions, Erode, the same point may have to be agitated and under such circumstances, if the cases are transferred from the Appellate Court to this Honourable Court, it may be convenient for the parties and in the interest of justice, it is necessary that those appeals pending before the Fast Track Court No1, Erode, may be transferred to this Court.

3. Per Contra, the learned counsel for the first respondent/ complainant submits that the petitioners have twice filed petitions to quash the proceedings before this court and one of the point agitated was that the petitioners were not in charge and responsible for the affairs of the business of the firm. But, this Court has dismissed those quash applications. However, liberty was given to agitate all the grounds before the Appellate Court. The appeals have been taken up for arguments before the Appellate Court and under such circumstances, the same point can be very well agitated before the Appellate Court, viz., Additional Sessions Judge cum Fast Track Court No.1, Erode. The question of law regarding 'in charge and responsible' has been repeatedly decided and there are several reported judgments of the Supreme

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Court in this regard. Those judgments of the Supreme Court can very well be cited before the Appellate Court and if the Appellate Court is satisfied, it may pass orders in favour of the petitioners. Under such circumstances, the transfer of those appeals to the High Court is unnecessary and it may create great hardship to the first respondent/complainant.

4. I have heard the submissions made by both the parties and perused the materials available on record. Admittedly, the appeals are pending at the stage of arguments. In some of the cases, the accused were acquitted and the petitioners want to take up similar points in the present appeals, which are pending before the Additional Sessions Judge cum Fast Track Court No.1, Erode. The petitioners are at liberty to agitate such points during the course of their arguments. Suppressing the fact that the appeals have been taken up for arguments, the present petitions seeking for transfer have been filed and stay has been granted by this Court. But for the stay of the impugned proceedings, the enquiry of the appeal would have been completed by this time. If the petitioners are aggrieved of the order passed by the Fast Track Court No.1, Erode, they may very well approach this Court and under such circumstances, no prejudice may be caused to the petitioners. At any rate, I do not find any ground for transfer of the appeals to the High court.

5. In view of the facts and circumstances of the case, I find, there is no merit in the applications seeking for transfer. Therefore, the criminal original petitions are dismissed. Consequently, connected Crl.M.Ps. are closed.

bs/ Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Prl District Judge, (Fast Track Court No.1), Erode.
2. The Public Prosecutor, High Court, Madras.
3. The Additional Public Prosecutor, Erode

+ 2 ccs to M/s. Sathis Parasaran, Advocate SR Nos 57088, 57089

+ 1 cc to M/s. Ram & Ram, SR No.56767

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